

## Bad Historian or Good Lawyer? Demetrios Chomatenos and Novel 131

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For the historian, law has a high reputation and an aura of specialist learning about it. Historians generally admit that the expertise of legal historians is required to deal with legal texts properly, although they may have differing opinions as to what constitutes a legal text.<sup>1</sup> While deferring to their learned colleagues, historians have been slow to appreciate the message which has come from their studies and which has serious implications for the position of law in Byzantium: that is, since the law was not a professional or specialist activity in Byzantium after the sixth century, one cannot expect from its "practice" the characteristics normally associated with a profession. There was no consistency of approach, no recognized procedure for dealing with contradictory laws. Every and any argument was admissible; an appeal to the law was no more than one among many possible arguments that could also include personal experience, observations on physical and psychological traits, citation of ancient Greek literature, and the use of literary devices. Arguments that cited laws were neither more "correct" nor more "legal" than those that did not. The situation has been summarized in the following manner: "Byzantine legal thought is characterized by the juxtaposition of arguments of equal authority in which rhetorical skills predominated over the dogmatics of law."<sup>2</sup> It follows from this fluid state of affairs that a literal reading of texts that cite laws is inappropriate and potentially misleading.

<sup>1</sup>For these "differing positions," see A. Kazhdan, "Do We Need a New History of Byzantine Law?" *JÖB* 39 (1989), 1–28.

<sup>2</sup>The first systematic analysis of Byzantine legal argument, on the basis of the 11th-century collection of the decisions of Eustathios Rhomaïos, was undertaken by D. Simon, *Rechtsfindung am byzantinischen Reichsgericht* (Frankfurt am Main, 1973), 7–32. For a summary of conclusions, see D. Simon, *Περί της αξίας του Βυζαντινού δικαίου*, *Ελληνική Δικαιοσύνη* 30 (1989), 274–81. Against a positivist reading of Byzantine law see also M.-Th.

One "lawyer" who did cite laws and whose opinion and advice were greatly sought after is Demetrios Chomatenos, archbishop of Bulgaria at Ochrid (1216/17–ca. 1236).<sup>3</sup> His decisions and opinions on cases concerning marriage, dowry, inheritance, and murder have been the object of interest and analysis in recent years.<sup>4</sup> Among his collected works is a letter with which historians of the period after 1204 are best acquainted. Addressed to the patriarch at Nicaea, Germanos II (1223–40), it was written by Chomatenos in his capacity as spokesman for the western Greeks living in the state established in Epiros after 1204, and in defense of his own action: his crowning and anointing of Theodore Komnenos Doukas in Thessalonica after the latter's reconquest of the city from the Latins in 1224.<sup>5</sup> Although it is but one in a series of letters written by members of the western ecclesiastical hierarchy to explain and defend their independent actions to Nicaea,<sup>6</sup> it is perhaps the

Fögen, "Legislation und Kodifikation des Kaisers Leon VI.," *Subseciva Groningana* 3 (1989), 23–35, here at 34–35.

<sup>3</sup>G. Prinzing, *Lexikon des Mittelalters*, s.v. Chomatenos, cols. 1874–75.

<sup>4</sup>D. Simon, "Witwe Sachlikina gegen Witwe Horaia," *Fontes Minores* 6 (1984), 325–75; idem, "Ein Juristenkontroverse über das Schicksal der Mitgift," *Δώρημα στον Ι. Καραγιαννόπουλο*, *Βυζαντινά* 13 (1985), 649–66; idem, "Erbvertrag und Testament," *ZRVI* 24–25 (1986), 291–306; A. E. Laiou, "Contribution à l'étude de l'institution familiale en Épire au XIII<sup>e</sup> siècle," *Fontes Minores* 6 (1984), 275–323; R. J. Macrides, "Killing, Asylum and the Law in Byzantium," *Speculum* 63 (1988), 509–38.

<sup>5</sup>For the letter: J. B. Pitra, ed., *Analecta sacra et classica Spicilegio Solesmensi parata*, VI (Paris-Rome, 1891; repr. Farnborough, 1967), no. 114, cols. 487–98. Günter Prinzing, who is preparing a new edition for the *Corpus Fontium* (Berlin series), generously made his edition of this letter available to me. Reference will be made to both editions since the new edition contains important changes. For the conquest of Thessaloniki in 1224, see B. Sinogowitz, "Zur Eroberung Thessalonikes im Herbst 1224," *BZ* 45 (1952), 28.

<sup>6</sup>A. D. Karpozilos, *The Ecclesiastical Controversy between the Kingdom of Nicaea and the Principality of Epiros (1217–1233)*

best known and most quoted because it seems to express the ideology<sup>7</sup> of the state ruled by the Komneno-Doukai. Indeed, in the absence of any narrative account of the Epirot state to counterbalance Akropolites' history of the "Nicaean Empire," Chomatenos' letter, together with those of his colleagues, must serve as our only surviving statement of the Epirot position.

The letter which Chomatenos wrote sometime after the coronation of Theodore Komnenos Doukas<sup>8</sup> is well known also to those interested in the institution of imperial unction in Byzantium, for the initial letter of Patriarch Germanos and Chomatenos' reply to it contain the first unambiguous references to a material unction of a Byzantine emperor at coronation. All earlier references to imperial unction are much less explicit and have conventionally been interpreted as figurative.<sup>9</sup> But Germanos and Chomatenos mention an actual substance used in anointing, although they disagree as to what it should be: *myron*, a synthesis of oil and aromatic ingredients, as Germanos assumed, or simple blessed oil (*elaion*), as Chomatenos asserted.

Historians, always on the lookout for change, especially in the twelfth and thirteenth centuries when Byzantium was more open or vulnerable to western influence, have, not surprisingly, seen in the correspondence of Germanos and Chomatenos an indication that a change did occur in the Byzantine coronation ceremony. For M. Jugie and G. Ostrogorsky, the letters of the churchmen provided evidence that imperial unction was introduced after 1204, at Nicaea, and in imitation of the

Latin emperors at Constantinople.<sup>10</sup> According to F. E. Brightman and D. M. Nicol, unction was added to the coronation ceremony before 1204, in the twelfth century, likewise through Latin influence.<sup>11</sup> Nicol, however, added a refinement to the discussion by arguing that there was indeed a change in the thirteenth century: what was new after 1204 was not the *act* of imperial unction (for both churchmen took this for granted) but the *substance* used in anointing an emperor. According to Nicol, simple blessed oil had been employed previously, in Constantinople in the twelfth century, while myron was introduced at Nicaea as an innovation and continued to be used from then on.<sup>12</sup>

More fundamental here than the question of imperial unction—when it was first practised in Byzantium and what sort of substance was used—is the way we read texts, especially those citing laws. The conclusions of the historians summarized above reveal underlying assumptions about the law and a characteristic stance towards it. For their resolution of the discrepancy in the statements of Germanos and Chomatenos is based on nothing more than a faith in the truth enshrined in laws. For them it is Chomatenos' reputation for knowledge of the law and his citation of laws that lends more weight to his assertions and tips the scale in his favor. Chomatenos was "a more erudite canonist than the Patriarch"; he must therefore be correct when he says that emperors are anointed with oil. It follows then that Germanos was "guilty of an innovation and perhaps of unwittingly adopting western practice" when he assumed that myron was the substance used in imperial unction.<sup>13</sup>

The reading of Chomatenos' reply proposed below suggests that he has been misunderstood. While lip service has been paid to his legal erudition, no attention has been given to his argument and forensic skills. That this is an appropriate ap-

(Thessaloniki, 1973), *passim*. For an analysis of the chronology of the correspondence between Nicaea and Epiros, see G. Prinzing, "Die Antigraphe des Patriarchen Germanos II. an Erzbischof Demetrios Chomatenos von Ohrid und die Korrespondenz zum nikäisch-epirotischen Konflikt 1212–1233," *RSBS* 3 (1983), *Miscellanea Agostino Pertusi* (Bologna, 1984), 21–64, here at 58–60 (hereafter Prinzing, "Antigraphe").

<sup>7</sup>D. M. Nicol, *The Despotate of Epiros* (Oxford, 1957), 92–94; Karpozilos, *Ecclesiastical Controversy*, 73–86; most recently, A. Stavridou-Zaphraka, *Νίκαια και Ήπειρος του 13<sup>ου</sup> αιώνα: Ιδεολογική αντιπαράθεση στην προσπάθεια τους να ανακτήσουν την αυτοκρατορία* (Thessaloniki, 1990), 153–95 (hereafter Stavridou-Zaphraka, *Νίκαια και Ήπειρος*).

<sup>8</sup>The coronation date of Theodore Komnenos Doukas is the subject of much debate. Opinions are divided between 1225 and 1227. For the former see now K. Lambropoulos, in *Ἡπειρωτικά Χρονικά* 29 (1988–89), 133–44; for the latter, H. Bee-Sepherle in *BNJ* 21 (1971–76), 272–79, and Stavridou-Zaphraka, *Νίκαια και Ήπειρος*, 156. It follows that Chomatenos' letter cannot be dated more precisely than "sometime after" 1225 or 1227.

<sup>9</sup>See the Appendix below.

<sup>10</sup>M. Jugie, *Theologia Dogmatica Christianorum Orientalium*, III (Paris, 1930), 151–53; G. Ostrogorsky, "Zur Kaisersalbung und Schilderhebung im spätbyzantinischen Krönungszeremoniell," *Historia* 4 (1955), 246–56, repr. in G. Ostrogorsky, *Zur byzantinischen Geschichte: Ausgewählte kleine Schriften* (Darmstadt, 1973), 142–52.

<sup>11</sup>F. E. Brightman, "Byzantine Imperial Coronations," *JTS* 2 (1901), 359–92, here at 383–85; D. M. Nicol, "Kaisersalbung: The unction of Emperors in Late Byzantine Coronation Ritual," *BMGS* 2 (1976), 37–52 (hereafter Nicol, "Kaisersalbung").

<sup>12</sup>*Ibid.*, 44–50.

<sup>13</sup>*Ibid.*, 44–45. Stavridou-Zaphraka is the first to analyze the entire letter. Her conclusion is similar to Nicol's, as is the general approach to the resolution of the discrepancy: *Νίκαια και Ήπειρος*, 178.

proach to the letter is revealed by Chomatenos himself when he likens his reply to Germanos to a defense: "So that we do not appear to be without a defense, like those who have been accused and can offer nothing reasonable (εὐλογον) to discredit the accusations against them, we write this in reply. . . ."<sup>14</sup>

In the letter which elicited Chomatenos' reply, Germanos censures the archbishop of Bulgaria and accuses him of appropriating patriarchal rights, of "dividing in two the unity of the Roman patriarchate."<sup>15</sup> He objects specifically to Chomatenos' coronation of Theodore Komnenos Doukas and asks for a precedent: what predecessor of Chomatenos as archbishop of Ochrid ever crowned an emperor of the Romans? "Show us the father and this is sufficient for us. . . ."<sup>16</sup> Although Germanos has spoken literally only of coronation (στεφοδοσίας, ἐστεφηφόρησαν) up to this point, his next comment shows that he includes unction also among the actions worthy of censure. For he goes on to observe that the "imperial chrism innovated" (τὸ διὰ σοῦ καινοτομηθὲν χρῆσμα βασιλικόν) by Chomatenos is no "oil of exaltation" but more like the oil from a wild olive. He asks where Chomatenos obtained his myron, for the old supply would have been exhausted with the passing of time and he had not obtained new myron from Germanos. Hinting that Chomatenos himself was the source of the myron, he sarcastically calls him a "myroblytes Demetrios,"<sup>17</sup> likening him to his namesake, the patron saint of Thessalonica, the city where the coronation had taken place and where the saint's body was said to produce myron.

In his succinctly worded and sarcastic criticism of Chomatenos, Germanos asks the archbishop of Ochrid to justify his actions. But the questions are rhetorical; he does not expect a reasonable reply. For, indeed, what previous archbishop of Ochrid had ever crowned a Roman emperor and what could have been the source of his myron, since he had not obtained it from the patriarch? Germanos feels no need to justify his criticisms and comments.

The patriarchal rights he accuses Chomatenos of appropriating were based on custom and had evolved with time. They had not been stipulated by, nor laid down in, law. The coronation of

emperors by the patriarch of Constantinople had been a regular part of the consecration of a Byzantine emperor since the fifth century.<sup>18</sup> Likewise, the patriarchal preparation of myron, used in anointing the newly baptized, as Germanos mentioned in passing,<sup>19</sup> had evolved from a right granted to all bishops to a patriarchal monopoly by the ninth century.<sup>20</sup>

Imperial coronation and myron production were certainly patriarchal rights by custom. Germanos, as deacon at Hagia Sophia before 1204,<sup>21</sup> was in a good position to know about both. The question is whether imperial unction was also customary and whether myron was the substance used, as Germanos appears to assume. To judge from the way he discusses both the practice and the substance in his letter, he took both for granted. In fact, the manner in which he mentions imperial unction (substance and act) is the strongest single argument we have for the anointing of emperors before 1204.<sup>22</sup> Yet the existence of the practice cannot be proven. The only certainty is that before Chomatenos anointed Theodore Komnenos Doukas, at least one other emperor had been anointed at Nicaea. Germanos had come to the patriarchal throne after John III Batatzes' coronation and had never himself anointed an emperor.<sup>23</sup> He cannot therefore be accused of "innovating" when he assumed that myron was the substance used in imperial unction. The alternative explanation for what he says is that he made a mistake about what had been used in Nicaea. But in this case it is not clear why myron should have been "adopted" for use in the Byzantine coronation ceremony until 1453.<sup>24</sup>

<sup>18</sup> A. Christophilopoulou, *Ἑκλογή, ἀναγόμεναι καὶ στέψας τοῦ Βυζαντινοῦ αὐτοκράτορος* (Athens, 1955), 40 and passim.

<sup>19</sup> Prinzing, "Antigraphe," 34, 28–35, 29. For the use of myron in post-baptismal unction, see P. Menevisoglou, *Τὸ Ἅγιον Μύρον ἐν τῇ Ὁρθοδόξῳ Ἀνατολικῇ Ἐκκλησίᾳ* (Thessaloniki, 1972), 21–23, 129.

<sup>20</sup> E. Herman, "Wann ist die Chrysamweihe zum ausschliesslichen Vorrecht der Patriarchen geworden?" *Sbornik ve pamet na Prof. P. Nikov* (Sofia, 1940), 509–15. Herman argues that the greater number of manuscripts from the 9th century and later that have prayers for the preparation of myron were intended for patriarchal use because other prayers also contained in these manuscripts are obviously connected with patriarchal activities.

<sup>21</sup> Nikephoros Kallistos Xanthopoulos, PG 147, col. 465cd; A. Karpozilos, "An Unpublished Encomium by Theodore Bishop of Alania," *Βυζαντινά* 6 (1974), 229–49.

<sup>22</sup> See the Appendix below.

<sup>23</sup> V. Laurent, "La chronologie des patriarches de Constantinople au XIII<sup>e</sup> siècle (1208–1309)," *REB* 27 (1969), 136–37; see also references in note 21 above.

<sup>24</sup> See Nicol, "Kaisersalbung," 46–49, for the view that Germanos was "guilty of an innovation and perhaps of unwittingly

<sup>14</sup> Ed. Pitra, col. 487; ed. Prinzing, lines 29–33.

<sup>15</sup> Ed. Pitra, no. 113, cols. 483–86; new edition, with translation and commentary by Prinzing, "Antigraphe," 34–35.

<sup>16</sup> Prinzing, "Antigraphe," 34, 18–22.

<sup>17</sup> Ibid., 34, 24–35, 31.

The rights Germanos assumed to be his as patriarch—crowning emperors and making myron—were based on tradition. Chomatenos' actions, of course, were not. They were unique and unprecedented, as were the circumstances in which he acted. This very fact provides Chomatenos with the main line of his defense: the anomalous situation brought about by the conquest of Constantinople has destroyed the ancient customs according to which emperors and patriarchs were promoted and appointed.<sup>25</sup> The phrase, "the destruction of the ancient customs" with variations, runs like a leitmotiv through his long reply.<sup>26</sup> If there were any doubt that Germanos' criticism—which never mentions the word "custom"—relied on just that, Chomatenos' reply would be sufficient to dispel it.

In place of ancient customs, Chomatenos cites written authorities and advances laws. In other legal works too, decisions on specific cases which had come before him, Chomatenos shows himself to be a defender of the authority of the law over custom.<sup>27</sup> In this instance, his attitude toward the law is also advantageous to his case. But his use of written authority does not automatically make him "right." It merely gives him one argument among others.

Chomatenos' reply to Germanos is a carefully constructed argument in three parts or stages. In the first stage, he argues for the "exact similarity of situation" and equality of position of himself and Germanos.<sup>28</sup> His argument is one of historical relativity. Now that Constantinople is in Latin hands, the old customs no longer hold. The unprecedented situation brings with it unprecedented acts. Just as Germanos had asked him what archbishop of Bulgaria had ever crowned an emperor of the Romans, Chomatenos replies by asking, "When did anyone hear of one and the same person tending the flock of the metropolis of

Nicaea and being called patriarch of Constantinople?"<sup>29</sup>

He goes on to show that just as their positions are similar, so too are their actions. The only claim that Nicaeans might have had to a superior position and a greater legitimacy—they had acted first in proclaiming an emperor (1205) and electing a patriarch (1208)—Chomatenos turns to his advantage. He argues that the West merely followed in their footsteps: "For what the East did in advance, having difficulty as its leader in each and every way, this the West did later in imitation."<sup>30</sup> He leaves the second half of the analogy unstated: whoever censures the West will have to find fault with its model also.

In the next stage the argument escalates. Chomatenos proceeds from a position of likeness and equality with Germanos to one of independence from him. Myron, its source and its use are the subject, and Chomatenos demonstrates his independence by giving three different reasons why he does not need the patriarch's myron.<sup>31</sup> Each reason is based on a different kind of argument. First, he can make his own. He begins and ends this section with the citation of two authorities, (pseudo-) Dionysios the Areopagite and the sixth canon of the council in Carthage, which support his claim that any bishop can make myron.<sup>32</sup> The written authorities frame this part of his argument but are neither the only nor the best argument for his independence.

Chomatenos advances a better reason why he does not need Germanos' myron. "It is not even part of the prevailing custom to anoint with myron him who is called upon to be proclaimed emperor, but with oil blessed by holy incantations."<sup>33</sup> This claim of Chomatenos' has provoked the most controversy and is the source of the idea that a change occurred in thirteenth-century Byzantine imperial unction. The implication of the "change theory" is that the Nicaeans had used myron in 1208 and

adopting western practice"; also pp. 46–49 for the evidence for the use of myron in imperial coronations from the late 13th to 15th centuries.

<sup>25</sup> Ed. Pitra, col. 488, 489, 490; ed. Prinzing, lines 58–62, 115, 140.

<sup>26</sup> See below, note 35, for references.

<sup>27</sup> D. Simon, "Balsamon zum Gewohnheitsrecht," in *Σχόλια D. Holwerda Oblata*, ed. W. J. Aerts et al. (Groningen, 1985), 119–33, here at 129–30: "In der Sache behandelt der gesetztes- und Kaisertreue Chomatian die Gewohnheit genau so, wie es in jener Theorie angelegt war—als ungeliebte Störung eines geordneten gesetzlichen Betriebs. . . ."

<sup>28</sup> Ed. Pitra, cols. 488–91; ed. Prinzing, lines 58–193. Stavridou-Zaphraka, *Νίκαια και Ηπειρος*, 171–72.

<sup>29</sup> Ed. Pitra, col. 490; ed. Prinzing, lines 118–20. The text should be emended to read *μητρόπολιν* instead of *μητροπολίτην*. See Nikephoros Blemmydes' description of this arrangement: J. A. Munitiz, *Nikephoros Blemmydes, A Partial Account* (Louvain, 1988), 49.

<sup>30</sup> Ed. Pitra, 489–490; ed. Prinzing, lines 107–22.

<sup>31</sup> Ed. Pitra, 493–494; ed. Prinzing, lines 250–301.

<sup>32</sup> Ed. Pitra, 493, 494; ed. Prinzing, lines 252–62, 295–98. Ps.-Dionysios, *Περὶ τῆς ἐκκλησιαστικῆς ἱεραρχίας*, PG 3, cols. 472D, 476BCD, 484A; canon 6 Carthage: G. A. Rhalles and M. Potles, *Σύνταγμα τῶν θεῶν καὶ ἱερῶν κανόνων*, III (Athens, 1853; repr. Athens, 1966), 309 (hereafter Rhalles-Potles).

<sup>33</sup> Ed. Pitra, 493; ed. Prinzing, lines 277–80.

1222, whereas it had been the Constantinopolitan practice to use oil.<sup>34</sup> In other words, Chomatenos' observation is interpreted as referring to practice before 1204. But such an interpretation does not seem possible because of the stark contrast between the expression "the prevailing custom" (τὸ ἐπικρατοῦν ἔθος) and other passages in the letter where the word "custom" appears. Elsewhere ἔθος is used in combination with qualifiers that refer to the old ways, what used to take place in Constantinople (τὰ ἐν Κωνσταντινουπόλει ἀρχαῖα ἔθη).<sup>35</sup> As we have seen, he has argued that these ways are gone; they are a thing of the past.

In contrast, then, the "prevailing custom" must refer to the practice at the time of writing. Chomatenos is not correcting Germanos on the basis of Constantinopolitan practice before 1204—telling him what should have or must have been used in Nicaea in 1208 and 1222. He does not have Byzantine coronations in mind at all but those which had taken place outside the Byzantine world.<sup>36</sup> Recent coronations had been Kalojan's at Trnovo in 1204 by a legate of Pope Innocent III,<sup>37</sup> that of Peter of Courtenay in Rome by Pope Honorius III in 1217,<sup>38</sup> Stephen Nemanjić's by a cardinal legate of Honorius III in 1217,<sup>39</sup> and Frederick II's in Rome in 1222.<sup>40</sup>

If this interpretation of Chomatenos' claim is correct, he would appear to be arguing on the basis of western practice, and some historians have thought Chomatenos himself adopted western

practice.<sup>41</sup> But the situation is more complicated. It is not a matter of an outright imitation. It is noteworthy that those who have concerned themselves with the question begin and end their observations with this comment of Chomatenos and do not see it within the context of the whole argument. The full significance of his statement can be understood only by reading it to the end.

Finally Chomatenos advances the third reason why he does not need Germanos' myron. If it were possible (εἰ ἔξδὼν ἦν) to anoint emperors with myron and by any chance he had none, that which pours forth in streams from the tomb of the great martyr Demetrios would have sufficed.<sup>42</sup> Chomatenos' argument for independence from the patriarch culminates in the greatest symbol of Thessalonian independence from Constantinople, the patron saint of the second city of the empire. The separatism of Thessalonica had found expression in the local hagiographical tradition from the seventh century.<sup>43</sup> Chomatenos exploits this tradition in his own argument for independence from "central authority," now embodied in an emperor and patriarch at Nicaea. Germanos himself had given him the occasion for this argument when he sarcastically named him a "myroblytes Demetrios."<sup>44</sup> In return Chomatenos calls Germanos' bluff, for the patriarch could hardly deny that the saint's myron, a gift from God, was superior to any myron prepared by the patriarch.<sup>45</sup> It was superior by virtue of its quantity alone. Chomatenos stresses the

<sup>34</sup> Nicol, "Kaisersalbung," 49; Stavridou-Zaphraka, Νίκαια καὶ Ἱππεύς, 178.

<sup>35</sup> Ed. Pitra, 488, 489, 490, 491; ed. Prinzing, lines 56–57, 105–7, 113–14, 140–44, 310–11.

<sup>36</sup> In his paraphrase of the sentence in question, Nicol, "Kaisersalbung," 45, adds the words "for Byzantine Emperors" ("it was not the custom for Byzantine Emperors to be anointed with the myron"), thus closing the door to the possibility that Chomatenos did not have Byzantine emperors in mind at all.

<sup>37</sup> R. L. Wolff, "The 'Second Bulgarian Empire': Its Origin and History to 1204," *Speculum* 24 (1949), 190–98; repr. in R. L. Wolff, *Studies in the Latin Empire of Constantinople* (London, 1976). A letter of Pope Innocent III to the archbishop of Trnovo refers to the oil (*oleum*), not chrism (*chrisma*, i.e., *myron*), used for anointing princes: PL 215, col. 284.

<sup>38</sup> D. M. Nicol, "The Fate of Peter of Courtenay, Latin Emperor of Constantinople, and a Treaty That Never Was," in Καθηγήτρια: *Essays Presented to Joan Hussey* (London, 1988), 377–83. Theodore Komnenos Doukas had close contact with this Latin emperor of Constantinople, for he took him captive as he was traveling to Constantinople after his coronation in Rome.

<sup>39</sup> D. Obolensky, *Six Byzantine Portraits* (Oxford, 1988), 141–45.

<sup>40</sup> T. C. van Cleve, *The Emperor Frederick II of Hohenstaufen* (Oxford, 1972), 134.

<sup>41</sup> Christophilopoulou, Ἐκλογή, 211–12. See also note 37 for the use of oil by the pope.

<sup>42</sup> Ed. Pitra, 493–94; ed. Prinzing, lines 285–92.

<sup>43</sup> On the separatism of the cult, see R. J. Macrides, "Subversion and Loyalty in the Cult of St. Demetrios," *BSI* 51 (1990), 189–97.

<sup>44</sup> Chomatenos reminds Germanos of his "joke" or "mockery" of him just before he makes his assertion about the saint's myron: ed. Pitra, 493; ed. Prinzing, lines 282–84. St. Demetrios is attested as a myroblytes relatively late in the history of his cult, from the 11th century: Skylitzes, ed. I. Thurn (Berlin-New York, 1973), 413, 13–17. Kazhdan has questioned the authenticity of what might have been the earliest reference to myron, Ioannes Kaminiates' account of the Saracen sack of Thessaloniki in 904: A. P. Kazhdan, "Some Questions Addressed to Those Scholars Who Believe in the Authenticity of Kaminiates' Capture of Thessalonica," *BZ* 71 (1978), 301–14.

<sup>45</sup> Although Chomatenos' claim is made in provocation to Germanos, there are some indications that saints' myron was used for sacramental purposes. In a synodal act of 1355, the patriarch of Constantinople, Kallistos, reprimands the clergy at Trnovo for using the myron from the relics of Sts. Demetrios and Barbara for post-baptismal unction: F. Miklosich and I. Müller, *Acta et Diplomata Graeca mediæ ævi*, I (Vienna, 1860), 436–42, here at 441. See, too, the compliment paid by Blemmydes to the rulers in Epiros ten years later, in a poem in honor

abundance of the saint's myron (ἀπέχρησεν; ποταμηδὸν τὰ μύρα προχέουσα) in what is not merely a tribute to the saint and an acknowledgment of the hagiographical topos, but a comparison to the detriment of the patriarch whose myron Chomatenos had earlier described as "trickling from his hand."<sup>46</sup>

It can be observed that Chomatenos' defense so far has been based on a number of different arguments, only two of which have been written authorities: pseudo-Dionysios the Areopagite and canon 6 of the council at Carthage. His other arguments range from observations concerning the anomaly of the times, an analogy, hagiographic tradition, and an assertion that it is the prevailing custom to use oil in anointing emperors. For this assertion, however, Chomatenos offers no support. Thus, those who have argued that his legal erudition gives him the edge over Germanos or that he uses laws and other authorities to strengthen his case for the use of oil<sup>47</sup> in relation to patriarchal myron have not, it seems, observed how and where he cites laws. Chomatenos' defense relies on much more than knowledge of the law. It is a display of forensic skills which aims at impressing, checking, and confounding his opponent. Argument is advanced for the sake of argument. That is why, for example, Chomatenos states that any bishop can make myron and yet also claims that myron is not what is needed in any case.

It is in the third and final stage of Chomatenos' argument, which goes beyond an assertion of independence to one of autonomy and even superiority, that he relies on law most extensively. In this section he bases his argument on a reading of Justinian's novel 131 of 545.<sup>48</sup> With this law Justinian

made his birthplace, Prima Justiniana, a metropolitan see of its own province and archbishopric over a number of Illyrian provinces that had previously been under the archbishop of Thessalonica, itself the seat of a papal vicar. Under novel 131, Prima Justiniana became the new seat of a papal vicar.<sup>49</sup>

Chomatenos' version of Justinian's novel, which as he notes was included in the Basilika (5.3.2–5), is not a straightforward summary but a rewriting. He begins with Justinian's ranking of the churches (131.2). The emperor had declared the pope of Old Rome to be first, before all priests, and the archbishop of Constantinople, the New Rome, was to have second place, and "immediately after him he mentioned the archbishopric of Bulgaria, which he also named Justiniana, because it was from that place that he drew his origin and because he attached the surrounding Bulgarian land to the Roman boundaries by his own toil and the sweat of campaigns."<sup>50</sup>

This statement alone contains three variations on Justinian's novel. First and most significant is the identification of Prima Justiniana with the archbishopric of Bulgaria, Chomatenos' see. This is not the first or last time the identification was made, but it is the most developed expression of the identification by an archbishop of Bulgaria.<sup>51</sup> In the twelfth century, another archbishop of Bulgaria at Ochrid, Ioannes Komnenos, had signed a synodal act as archbishop of Prima Justiniana.<sup>52</sup> Chomatenos was the first archbishop of Bulgaria to use this title after an interval of almost 100 years. In the letter he wrote to Germanos, congratulating him on his accession to the patriarchal throne, he had styled himself, "Demetrios, by the mercy of God archbishop of Prima Justiniana and all Bulgaria."<sup>53</sup> But late eleventh- and twelfth-century texts also contain this identification, most notably Balsamon's commentary on the Nomoka-

of St. Demetrios that could have been inspired by Chomatenos' letter: Macrides, "Subversion and Loyalty in the Cult of St. Demetrios."

<sup>46</sup> Compare the references to the abundance of the saint's myron (ed. Pitra, 493–94; ed. Prinzing, lines 288, 291–92) with the way in which Chomatenos refers to Germanos' myron: "(The myron) is judged to be unlawfully employed because it does not trickle from the hand of the bishop of Constantinople": ed. Pitra, 493; ed. Prinzing, lines 266–68. Nicol's translation ("*Kaisersalbung*," 44), "judging all such preparations to be invalid unless they flow from the hand of the Bishop of Constantinople," is more elegant but glosses over the literal meaning of ἀποστᾶζει and Chomatenos' intentional "dig" at Germanos.

<sup>47</sup> Stavridou-Zaphraka, Νίκαια και Ἡπειρος, 178: Για το λόγο αυτό ανατρέχει σε κανόνες και άλλα κείμενα, για να κατοχυρώσει το ισοδύναμο του χρίσματος που χρησιμοποίησε ο ίδιος με το άγιο μύρο του πατριάρχη. . . .

<sup>48</sup> Ed. Pitra, 494–95; ed. Prinzing, lines 302–56; *CIC, Nov*, III, 654–56.

<sup>49</sup> For an analysis of the novel and a discussion of the context in which it was issued, see R. A. Markus, "Carthage-Prima Justiniana-Ravenna: An Aspect of Justinian's *Kirchenpolitik*," *Byzantion* 49 (1979), 227–302, here at 289–92 (hereafter Markus, "Carthage-Prima Justiniana-Ravenna"). On the novel see also S. Troianos, Θεοπύζομεν τοῖνυν, τάξιν νόμων ἐπέχειν τοὺς ἁγίους ἐκκλησιαστικὸς κανόνας . . . , Δώρημα στον Ι. Καργιαννόπουλο, Βυζαντινά 13 (1985), 1193–1200, here at 1198–99.

<sup>50</sup> Ed. Pitra, 494; ed. Prinzing, lines 313–30.

<sup>51</sup> G. Prinzing, "Entstehung und Rezeption der Justiniana-Prima-Theorie im Mittelalter," *Byzantinobulgarica* 5 (1979), 269–87 (hereafter Prinzing, "Justiniana-Prima-Theorie").

<sup>52</sup> Prinzing, "Justiniana-Prima-Theorie," 273.

<sup>53</sup> Ed. Pitra, no. 112, col. 481. In his reply to this letter Germanos addresses Chomatenos merely as "archbishop of Bulgaria": Prinzing, "Antigraphe," 34, 39–40.

non and on canon 45 of Carthage.<sup>54</sup> It has been suggested that the theory of the identity of Prima Justiniana and Bulgaria could have originated and developed among the clergy of Ochrid, who themselves would have received an impetus from the revival of canon law studies in the eleventh and twelfth centuries.<sup>55</sup> Certainly Chomatenos was associated with Ochrid already in the late twelfth century as apokrisiarios and chartophylax. His use and elaboration of the identification also owes much to his knowledge of the canons and, it would seem, to his reading of Balsamon.<sup>56</sup>

Although the identification is problematic and wrong,<sup>57</sup> Chomatenos' position was naturally enhanced by association with Justinian's birthplace, a privileged autocephalous see. But he raises the status of Prima Justiniana even more by claiming that Justinian mentioned it in the novel immediately after Rome and Constantinople. Indeed, this is literally true. Prima Justiniana is mentioned next but the context has changed; it is no longer that of the hierarchy of the churches but rather the status of Prima Justiniana as an archbishopric in its own see (131.3). Chomatenos, however, gives the misleading impression that Justinian mentioned the archbishopric third in the hierarchy after Rome and Constantinople.

Finally, Chomatenos claims that Justinian reconquered Bulgaria for the Roman Empire, thus either attributing to Justinian Basil II's achievements or confusing Prima Justiniana with Carthago Justiniana which Justinian had reconquered and then honored, as novel 131 proceeds to mention (131.4).<sup>58</sup> The status of Chomatenos' see is thus further enhanced by its added connection with Justinian. Chomatenos' rewriting of the novel

produces unsound history, but it is not new with him. This version of events (Justinian's restoration of Bulgaria to the empire) can be found also in Balsamon's commentary on the canons.<sup>59</sup>

If Prima Justiniana and Chomatenos' see are one and the same, then Chomatenos' autonomy is assured. Yet Chomatenos takes the argument further when he states that Prima Justiniana was given the privileges (προνόμια) of the throne of Rome in the provinces under it.<sup>60</sup> Here he rewords the text of the novel which reads that the archbishop "takes the place" (τόπον ἐπέχειν) of the throne of Rome in the provinces under him.<sup>61</sup> Chomatenos substitutes the word "privileges," which promises more. Finally he adds to Prima Justiniana's honors by assigning to it the "right" (δίκαιον) of the archbishop of Carthage, something not stipulated by novel 131 but which can be found in the commentaries of Balsamon.<sup>62</sup> Armed with these rights and privileges which were "ordained by pope Vigilius" and reinforced by Justinian, Chomatenos acquires a more illustrious position than that of the patriarch, for as Chomatenos points out, Justinian ranked the pope's see above Constantinople itself. By claiming an alignment with Rome, Chomatenos put himself in a higher position than the patriarch of Constantinople.

Chomatenos' argument culminates in the following statement: "If then we possess the privileges of the pope in our province, what is surprising (καινόν) if we also anointed an emperor, which the pope also does?"<sup>63</sup> This is a false syllogism based on faulty premises, for neither was Ochrid Prima Justiniana, nor was crowning an emperor

<sup>54</sup> Nomokanon I, 5: Rhallès-Potles, I, 44–45; canon 45 of Carthage: Rhallès-Potles, III, 450; canon 2, I Constantinople: Rhallès-Potles, II, 171. Another text, dated by Prinzing to the second half of the 11th–12th century, contains the same identification of Prima Justiniana and Bulgaria but locates the throne of the archbishop at Velevousdion (Velvužd), not Ochrid: Prinzing, "Justiniana-Prima-Theorie," 277–87.

<sup>55</sup> Prinzing, "Justiniana-Prima-Theorie," 272.

<sup>56</sup> On Chomatenos' career see Prinzing, *Lexikon des Mittelalters*, cols. 1874–75. On his use of Balsamon elsewhere, also without explicit citation of him, see note 68 below and G. Dagron, "Le caractère sacerdotal de la royauté d'après les commentaires canoniques du XIIe siècle," in *Byzantium in the Twelfth Century*, ed. N. Oikonomides (Athens, 1992).

<sup>57</sup> Prinzing, "Justiniana-Prima-Theorie," 269: Prima Justiniana is the modern Caričin Grad, south of Niš.

<sup>58</sup> Ed. Pitra, 494; ed. Prinzing, lines 325–28. For a discussion of this "rewriting," see G. Prinzing, "Das Bild Justinians I. in der Überlieferung der Byzantiner von 7. bis 15. Jahrhundert," *Fontes Minores* 7 (1986), 59–62.

<sup>59</sup> Nomokanon I, 5: Rhallès-Potles, I, 44. Prinzing, "Das Bild," 61 and note 217, believes that the attribution of the conquest of Bulgaria to Justinian is a later addition to the scholion of Balsamon and therefore did not serve as a source for Chomatenos. The relationship between Balsamon's text and Chomatenos' interpretation of novel 131 requires further investigation.

<sup>60</sup> Ed. Pitra, 495; ed. Prinzing, lines 335–40. Also Balsamon, canon 45 Carthage: Rhallès-Potles, III, 450.

<sup>61</sup> Markus, "Carthage-Prima Justiniana-Ravenna," 277–89; Prinzing, "Das Bild," 61–62.

<sup>62</sup> Novel 131.4, stipulates "We ordain that the 'pontifical right' (δίκαιον ἀρχιερωσύνης), which we gave to the bishop of Carthago Justiniana of the African diocese when God restored it to us, is to be preserved." See Markus, "Carthage-Prima Justiniana-Ravenna," 279–89, on the status of Carthage. He comments on the "deliberately unresolved ambiguity of language" with regard to the δίκαιον ἀρχιερωσύνης. Balsamon, canon 45 Carthage: Rhallès-Potles, III, 450.

<sup>63</sup> Ed. Pitra, 495; ed. Prinzing, lines 353–56. This statement plays on the word καινόν (strange, new), which Chomatenos also uses elsewhere in his letter (ed. Pitra, 492, 493, 494; ed.

one of the privileges of the pope granted to the archbishop of Prima Justiniana. But perhaps we can now understand why Chomatenos spoke of the "prevailing custom" of anointing with oil. This was the custom which prevailed in Rome and was the pope's practice.<sup>64</sup> Some might conclude from this that in addition to practising bad logic and bad history Chomatenos was a friend of the Latins. Such an attitude would hardly have been tenable under the political circumstances, nor would it have gained him much authority in Germanos' eyes. The relationship with western ideas and influence was more complicated. His thinking was affected and shaped by the events in which the West played such a large role, by the conquest of Constantinople and the unprecedented circumstances in which the Greeks as a result lived. To this extent, then, the influence on his thinking was "western,"<sup>65</sup> but the justification for his actions is taken from the indigenous legal tradition and founded on the greatest authority, Justinianic law.<sup>66</sup> Furthermore, it is in keeping with the best tradition of legal argument. As in other works by him, and like other lawyers, Chomatenos rewrites laws, changing their wording and twisting their meaning. He is also inconsistent. The same man who presents an argument based on historical relativity displays a remarkable lack of historical perspective in the same text, when he transfers a law from its sixth-century political and ecclesiastical context to the thirteenth century.<sup>67</sup>

Prinzing, lines 234, 288, 307) to refer to the unstrange or un-novel nature of his actions, in reply to Germanos' criticism of the "imperial chrism innovated" (καινοτομηθέν) by Chomatenos.

<sup>64</sup> A decretal of Innocent III "On holy unction" insists on the use of "oil" and not chrism (myron) for kings: E. H. Kantorowicz, *The King's Two Bodies* (Princeton, 1957), 318–22. See the same pope's letter to the archbishop of Trnovo on this subject, note 37 above.

<sup>65</sup> Chomatenos' statement on the limitations of imperial power which is without precedent for Byzantium was, likewise, though not directly taken from the West, influenced by the events of 1204: D. Simon, "Princeps legibus solutus: Die Stellung des byzantinischen Kaisers zum Gesetz," in *Gedächtnisschrift für Wolfgang Kunkel*, ed. D. Nörr and D. Simon (Frankfurt am Main, 1984), 449–92, here at 491–92: "Es scheint zumindest erwägenswert zu sein, dass erst das politische und kulturelle Ambiente des Ochrid im 13. Jh. einen Boden schuf, auf dem eine derartige Theorie wachsen konnte."

<sup>66</sup> As Chomatenos shows from his arguments in another case, for him the laws of the Corpus Iuris which were received into the Basilika were valid and operative, even if the context and the conditions had changed: D. Simon, "Ein Juristenkontroverse über das Schicksal der Mitgift," (as in note 4 above), 661, 663.

<sup>67</sup> For similar methods in some of Chomatenos' decisions, see D. Simon, "Balsamon zum Gewohnheitsrecht," (as in note 27 above), 129–30; idem, "Gewissensbisse eines Kaisers," in *Fest-*

But it is not only in his techniques that Chomatenos shows himself to be in close relationship with twelfth-century lawyers. His interpretations also seem to owe much to Zonaras and Balsamon, whose commentaries he could have known.<sup>68</sup> The favoring of Rome over Constantinople was a position already taken by Zonaras, in his commentary on canon 3 of I Constantinople, where he cites novel 131 to support his interpretation of the canon. According to Zonaras Constantinople did indeed come after Rome in a hierarchical and not, as some had argued, only in a temporal sense.<sup>69</sup> As we have seen too, almost all of Chomatenos' interpretations of novel 131 on Prima Justiniana, its identification with Bulgaria, the attribution to it of papal privileges and the rights of Carthage, can be found in Balsamon's commentaries on various canons. What was new in Chomatenos was the use to which he put this material.

Chomatenos' handling of novel 131 should demonstrate better than any other single argument that we cannot afford to read texts in which laws are cited as repositories of truth. Chomatenos' claim that it is the prevailing custom to anoint with oil should be seen in the context in which it was stated. It is an assertion of his independence from patriarchal authority. Myron had been used in imperial unction at least since 1204,<sup>70</sup> and it continued to be used in Constantinople after 1261. Germanos knew what he was talking about, but that does not make Chomatenos wrong. He was simply a good lawyer who knew how to produce a "well-argued" (εὐλογον) defense.

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#### APPENDIX

All attempts to assign a date to the introduction of imperial unction into the Byzantine coronation ritual have failed because of the impossibility of distinguishing between literal and metaphorical usage in the phrases *χρῶ* (εἰς) *βασιλέα*, *χρῶμα βασιλείας*. The problem is indeed insoluble on the basis of the surviving evidence which receives now

*schrift für Heinz Hübner*, ed. G. Baumgärtner et al. (Berlin, 1984), 263–71 (here at 267–68). For other lawyers' methods, see R. Macrides, "Perception of the Past in the Twelfth-Century Canonists," in *Byzantium in the Twelfth Century*.

<sup>68</sup> For an example of direct borrowing from Balsamon, see Simon, "Balsamon zum Gewohnheitsrecht," 130 and note 60.

<sup>69</sup> Rhalles-Potles, II, 173–74. See the discussion of the passage in P. Magdalino, "Constantinople and the *ἔξω χῶραι* in the Time of Balsamon," *Byzantium in the Twelfth Century*.

<sup>70</sup> See the Appendix below.



one, now another reading.<sup>71</sup> Here I would like to make some observations about the sources which, if anything, confirm that it is futile to impose a firm conclusion on the evidence.

The two periods before the thirteenth century which have been considered candidates for the introduction of imperial unction are the ninth century—to which date the first references to the emperor as the “Lord’s anointed”<sup>72</sup>—and the twelfth.<sup>73</sup> Both periods have in common not only a striking use of the language of unction but also emperors who played up a comparison with David: Basil I because of his poverty and lack of prominence before his accession to the throne, and Manuel I because he became emperor despite being the youngest son. Basil liked to be compared to David and asked Photios for information about David’s royal unction. He seems also to have acquired for the Nea Ekklesia the horn from which Samuel anointed David.<sup>74</sup> The language of anointing is, therefore, not surprisingly prominent in works written in Basil’s honor.<sup>75</sup>

Yet while such language is used to describe or refer to the emperor in the literature of the ninth and tenth centuries, whenever narrative sources mention the actual accession of a Byzantine emperor to the throne it is expressed in phrases such as “he took up the imperial scepter,” “he came to the throne,” “he was crowned.” This is the case until Choniates, who is the first author to use the verb “anointed” to describe imperial accessions in his History. He uses *χρίω* in connection with the inauguration of Manuel, Isaac II, Alexios III, Nicholas Kanavos, and Baldwin and Henry, the first two Latin emperors of Constantinople.<sup>76</sup> This appar-

ently significant usage has led historians to argue that imperial unction was adopted sometime in the twelfth century.<sup>77</sup> Choniates began to write his History after Manuel’s reign<sup>78</sup> for whom, as mentioned, the parallel with David was developed. As we have seen too, the biblical analogies of royal unction had long been celebrated and exploited in rhetorical texts and elsewhere. Given the influence of epideictic rhetoric on writers of the twelfth century and on Choniates’ work in particular,<sup>79</sup> it would be reasonable to infer that his use of *χρίω* to describe imperial inaugurations owes much to rhetorical usage and does not in itself prove or indicate the introduction or the existence of the practice in the twelfth century.

That the use or non-use of the word *χρίω* in describing imperial inaugurations has more to do with an author’s literary usage and personal interests than with the practice or nonpractice of unction seems to be confirmed by later authors also. Akropolites, writing in Constantinople after 1261, by which time unction was certainly part of the coronation ceremony, and describing the inauguration of emperors who had certainly been anointed earlier in the thirteenth century, never uses the expression for emperors at Nicaea, including Michael VIII, his favorite.<sup>80</sup> Even of Theodore Komnenos Doukas he says that Chomatenos “put the imperial diadem on him.”<sup>81</sup> In fact, if it were not for the correspondence of Chomatenos and Germanos, we would not be certain that a material unction took place in Byzantium until Michael IX’s inauguration as co-emperor in 1294, and historians would be searching for reasons for the adoption of this practice in the late Palaiologan period.<sup>82</sup>

<sup>71</sup>In a review of Ostrogorsky’s “Zur Kaisersalbung” (see note 10 above) in *SüdostF* 55 (1974), 490, J.-L. van Dieten showed how inconsistent interpretations of the sources have been and concluded “Das ganze Problem ist neu zu untersuchen.”

<sup>72</sup>The 9th-century date was proposed by W. Sickel, “Das byzantinische Krönungsrecht bis zum 10. Jahrhundert,” *BZ* 7 (1898), 511–57. For references to the emperor as “the Lord’s anointed,” see Sickel, notes 80 and 83, pp. 547, 548.

<sup>73</sup>Proposed by Brightman and Nicol (see above, p. 188).

<sup>74</sup>On this see P. Magdalino, “Observations on the Nea Ekklesia of Basil I,” *JÖB* 37 (1987), 51–64, esp. 58 and notes.

<sup>75</sup>Anonymous, ed. A. Brinkmann, *Alexandri Lycopolitani contra Manichaei opiniones disputatio* (Leipzig, 1895), xvii–xxii, lines 65, 76, 86; Photios, PG 102, cols. 581–84; letter of Photios to Basil (a. 868), no. 98, ed. B. Laourdas and L. G. Westerink, *Epistulae et Amphilochia*, II (Leipzig, 1984), 136, lines 105–6; Theophanes Continuatus, Bonn ed. (1838), 223. 20 ff, 335.2–4: ὅτι ἐκ πτωχείας Δαυὶτικῆς ἀνύψωσας τὸν πατέρα ἡμῶν, καὶ ἐχρίσας αὐτὸν τῷ χρίσματι τοῦ ἁγίου σου πνεύματος.

<sup>76</sup>*Nicetae Choniatae Historia*, ed. J. -L. van Dieten (Berlin-New York, 1975), 52.8; 346.5; 457.15; 562.62; 596.33; 612.38; and 642.78.

<sup>77</sup>F. E. Brightman, *JTS* 2 (1901), 359–92, here at 383–85.

<sup>78</sup>Ed. van Dieten, 329.58–330.3 (writing of Andronikos I’s reign in the time of Isaac I).

<sup>79</sup>See P. Magdalino, “The Phenomenon of Manuel I Komnenos,” in *Byzantium and the West, c. 850–c. 1200*, ed. J. D. Howard-Johnston (Amsterdam, 1988), 175–76. This is nowhere more evident than in the phrase Choniates uses to describe Manuel’s inauguration as emperor (van Dieten, 52.8: τὸν χρίσαντα *χρίει*), which is related to the language of an oration by Michael Italikos, delivered shortly after Manuel’s accession: οὗ τὸν ἀρχιερέα εὐχάτο καὶ τῷ χρίσματι τῆς τελειώσεως ἐχρίσεν. See *Michael Italikos, Lettres et Discours*, ed. P. Gautier (Paris, 1972), 77. See, too, Balsamon’s use of the comparison of imperial and episcopal unction (Rhalles-Potles, II, 466–67, III, 44–45; IV, 547) and the discussion of these passages by G. Dagron, “Le caractère sacerdotal de la royauté d’après les commentaires canoniques du XIIe siècle” (above, note 56).

<sup>80</sup>George Akropolites, *Opera*, ed. A. Heisenberg, with amendments by P. Wirth (Leipzig, 1978), 11.18; 34.17; 159.15–16.

<sup>81</sup>Akropolites, 34.2.

<sup>82</sup>Nicol, “Kaisersalbung,” 46–9.

In conclusion, the strongest “evidence” for the existence of the practice before 1204 is the way in which both Germanos and Chomatenos take it for granted. No firmer evidence can be found for the adoption of this practice at a particular time.